

TO: Town Council, Town of Windermere

FROM: Nick Dancaescu, GrayRobinson, P.A.

DATE: August 6, 2024

SUBJECT: Settlement Proposal from Trevor and Bo Siemian, Anne Fanelli, Russell and Cindy Gentry, George Poelker, Joyce Rose, and Doug and Jerry Fay

Dear Town Council Members:

On or around June 23, 2024, a “Proposal for Settlement of Boathouses Issue” was sent to several, if not all, of you. The Proposal purports to set forth several facts to which we disagree. Gray Robinson has reviewed this proposal. Enclosed herewith is a copy of the “Proposal for Settlement” including very brief responses to each “fact” in red. We look forward to the opportunity to discuss this proposal with you.

Thank you,
Nick Dancaescu and Summer DeGel

Proposal for Settlement of the Boathouses Issue June 23, 2024

At the May 2024 Town Council meeting, Councilperson Stroup presented his concerns and ideas regarding the ongoing lawsuit over the boathouses. We agree with Mr. Stroup. No matter the outcome, if this ends in trial, there will be no real winner. In that vein, we would like to make a written settlement proposal.

We hope this proposal is received in the spirit in which it is intended, i.e. we are all residents of this beautiful town and would like to start the healing process of mending any hard feelings or unintended animosities. We would all like to become participatory and engaged residents once again, something that we feel has been impossible in the current climate.

If you have not been made fully aware of the developments in the case, many of the points on which you, as a body, made the decision to pursue legal remedy have been found to be incorrect. We would like to take a moment to share with you some facts that have been discovered in preparation for trial.

- Fact... Experts and **the State of Florida Department of Environmental Protection on behalf of the Internal Improvement Trust Fund (see below) have determined that the lagoon where the boathouses are situated is not part of the sovereign submerged lands of Lake Butler and is not navigable water. The lagoon is privately owned.** The ordinary high-water line of Lake Butler is waterward of the lagoon area and not adjacent to the shoreline where the boathouses extend into the lagoon. The ordinary high-water line is on the far side of the spoil peninsula that is on the Lake Butler side of the lagoon. This is important because pursuant Florida Statutes [Sec. 253.141(1)] a claimed upland property owner has no riparian rights if it does not own property to the ordinary high-water line of "navigable" water of the State.
- **Response: While the experts retained by the Defendants have reached that conclusion, the case law is clear that the Court is the ultimate decision maker for the ordinary high-water line. The State can (and in this instance has) changed its opinion on the ordinary high-water line. Further, this is not determinative of the case.**
- Fact...The ordinary high-water line for Lake Butler for the lagoon area had never been determined until January 2024 when the boathouse owners' experts received a written determination by the Florida Department of Environmental Protection (determination is attached to this email).
- **Response: Prior to the original leases being signed in the 1980s, the State of Florida determined that the Town had the riparian rights in this area and thus control over the boathouses. While a definitive ordinary high-water line was not established at that time, it was simply a determination between Town owned property and State-owned property.**
- Fact... The town's legal theory for a right of possession or ownership of the boathouses is based on an erroneous assumption that the lagoon is sovereign submerged lands of Lake Butler and erroneous claim that the town has exclusive riparian rights to the lagoon where the boathouses are situated.

- Response: The experts retained by the Town strongly disagree with the recent DEP letter and believe the Court will as well. Nevertheless, even if the lagoon area is not sovereign submerged lands that does not end the case. The Town has claims of ownership through both adverse possession and inverse condemnation.
- **Fact...The land and lagoon in question are private, not sovereign, which nullifies any claim the town believed they had when you chose to pursue this matter legally. It also means that the town has no riparian rights along that stretch of shoreline and has collected rent on land it never owned.**
- Response: The experts retained by the Town strongly disagree with the recent DEP letter and believe the Court will as well. Nevertheless, even if the lagoon area is not sovereign submerged lands that does not end the case. The Town has claims of ownership through both adverse possession and inverse condemnation.
- Fact... Experts have concluded that the lagoon was originally a low-lying, marshy land area that was dredged at some point in the early 20th century. Thus, the existence of the spoil peninsula.
- Response: These are experts retained by the Defendants. The Experts retained by the Town disagree.
- Fact... **The state of Florida agrees with the experts that the lagoon lies wholly landward of the ordinary high-water line, and the state does not make any claim of ownership of the entire lagoon area.**
- Response: While the experts retained by the Defendants have reached that conclusion, the case law is clear that the Court is the ultimate decision maker for the ordinary high-water line. The State can (and in this instance has) changed its opinion on the ordinary high-water line. Further, this is not determinative of the case.
- Fact... Experts have concluded, through an exhaustive deed and title search, that the whole lagoon area is private property, and that the town has no claim on any of that property.
- Response: Again, this may be the opinion of the Defendants' experts who one of which testified none of their deeds gave them color of title to this area. The Town has claims to the property through the plat, through adverse possession, and/or through inverse condemnation. Again, the leases signed and ratified for more than 37 years affirmed the Town owned the uplands and had the right to lease the bottom lands.
- Fact... The town has already spent more than \$400,000 on legal and other fees on this case, and we have spent somewhat more.
- Fact...**The prevailing party in this case can collect their legal fees from the other party. This means that if we prevail, the town may well be liable for over \$1,000,000 in attorneys' fees and costs.**
- Response: Prevailing party fees are disfavored by many courts; however, the Defendants seek attorneys fees under a lease provision for a lease they claim should have been rescinded or was void. Case law in Florida finds that attorney's fees are not recoverable under a theory of mutual mistake as set forth by the Defendants.

Some of you voted to proceed with this lawsuit and some of you are newly appointed. In either case, we would like to emphasize that it is you, as representatives of the residents, who will be held responsible for the outcome of this case and be held to account for spending taxpayer money for no gain.

We know that the Council deals with a great number of things all at one time and as such, your time is very valuable. This proposal is brief but, hopefully, will initiate a constructive dialogue. If you think that there is value in settling this lawsuit, please request that the topic be put on the next Town Council meeting agenda so that the process can begin.

Please scroll down to see the settlement offer.

Settlement Offer

- 1) The boathouse owners will retain private ownership and possession of their respective boathouses and will have the right to sell and convey them as real property interests without interference or challenge from the Town and its officers, employees and agents.
- 2) The Town will disclaim any interest in the boathouses, the wooden walkways of the boathouses and to the submerged lands under the boathouses.
- 3) The Town will agree that the Town and its officers, employees and agents shall not interfere with the boathouse owners' and their successors' and assigns': (i) ingress and egress to and from the boathouses and wooden walkways; (ii) use of the boathouses and walkways and vessel navigation to and from the boathouses; (iii) connection of the boathouses to electric utilities and use thereof; and (iv) maintenance, repair and replacement of the boathouses and walkways.
- 4) The boathouse owners will pay property taxes directly to the Orange County Tax Collector. The Town and boathouse owners will cooperate in having the tax parcel information for the boathouses renamed from the Town to the respective boathouse owners.
- 5) The boathouse owners and successors and assigns will not use the boathouses for any commercial purposes or any business or trade, only customary uses of a boathouse (i.e. watercraft and related personal property storage and personal recreation).
- 6) The boathouse owners and successors and assigns will maintain their respective boathouse in good repair and in a clean, safe and sanitary condition.
- 7) The Complaints (Counts I, II and III) and Counterclaims (Sunshine Law) will be dismissed with prejudice by all parties. All parties will bear their own attorneys' fees and costs.

If there is no action or ongoing discussion between the parties concerning this proposal then the offer will expire on August 15, 2024.

This correspondence constitutes settlement communications and is not admissible in a court of law for any purposes.

Thank you for your time,

Trevor and Bo Semian
Anne Fanelli
Russell and Cindy Gentry
George Poelker
Joyce Rose
Doug and Jerry Fay